

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

ELIJAH GRACE and MAURICE PORTER, JR., §

Plaintiffs, §

v. §

1:22-CV-01240-DII

TEXMEX RAINY, LLC, §

Defendant. §

**ORDER**

Before the Court is the report and recommendation of United States Magistrate Judge Dustin M. Howell concerning Defendant Texmex Rainey, LLC’s (“Texmex Rainey”) Motion to Dismiss and Brief in Support, (Dkt. 10). (R. & R., Dkt. 15). Texmex Rainey timely filed objections to the report and recommendation. (Objs., Dkt. 16).

A party may serve and file specific, written objections to a magistrate judge’s findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Texmex Rainey timely objected to the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so and for the reasons given in the report and recommendation, the Court overrules Texmex Rainey’s objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Dustin M. Howell, (Dkt. 15), is **ADOPTED**.

**IT IS FURTHER ORDERED** that Texmex Rainey’s Motion to Dismiss and Brief in Support, (Dkt. 10), is **GRANTED IN PART AND DENIED IN PART AS FOLLOWS**: Plaintiff Elijah Grace and Plaintiff Maurice Porter, Jr.’s (collectively, “Plaintiffs”) intentional

infliction of emotional distress claim is **DISMISSED WITH PREJUDICE**. Plaintiffs' 42 U.S.C. § 1981 claim remains pending before this Court.

**SIGNED** on July 7, 2023.

  
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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE